IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

TUESDAY, THE SEVENTH DAY OF JUNE
TWO THOUSAND AND FIVE

PRESENT

**THE HON'BLE MR JUSTICE C.V.RAMULU**

-

**WRIT PETITION NO : 6441 of 1998**

Between:

N.Damodaram, S/o.A.Natarajan, Secunderabad. R/o.secunderabad.

**..... PETITIONER**

AND

1 The Air Officer Commanding, Air force Sation, Hakimpet, Secunderabad.
2 The Chief Administrative Officer , Air Force Station, Hakimpet,

Secunderabad.

**.....RESPONDENTS**

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a writ, order or direction, more particularly one in the nature of writ of Certiorari calling for the records relating to the notice HAK/2436/1044/PC dated 30-5-97 and also the consequential order HAK/2436/1044/PC dated 28-8-97 from the file of the 1st Respondent herein and after perusing the same quash the said proceedings by declaring them as arbitrary ,illegal and contrary to law and consequently direct the respondents to re- instate the petitioner in to service with all consequential benefits including pecuniary or other wise.

**Counsel for the Petitioner : MR.V.JAGAPATHI**

**Counsel for the Respondents : MR.M.GANGA RAO**

**The Court made the following :**

**ORDER** :

This Writ Petition is filed seeking a Certiorari to call for the records relating to notice No.HAK/2436/1044/PC, dated 30th May, 1997 and the consequential order No.HAK/2436/1044/PC, dated 28th August, 1987 on the file of the 1st respondent and to quash the same as arbitrary and illegal and consequently to direct the respondents to reinstate the petitioner into service with all consequential benefits.

It is the case of the petitioner that he was initially appointed in the Indian Air Force as Lascar in June, 1978 and posted to Air Force Administrative College, Coimbatore. Subsequently, he was appointed as a Cook and was transferred to Air Force Station, Hakimpet, Secunderabad in November, 1978 and worked as such till he was removed from service. According to the petitioner, he was issued with a charge sheet stating that he absented from duties without any permission. A regular Enquiry Officer was appointed and a domestic enquiry was conducted. The Enquiry Officer submitted his report and a copy of the same was furnished to him on 19th May, 1997. Further, the disciplinary authority issued a notice dated 30th May, 1997, calling upon him to show cause as to why he should not be removed from service for the misconduct proved. He submitted his explanation for the said show cause notice. The disciplinary authority passed final orders removing him from service without properly considering the explanation submitted by him for the show cause notice. Though the Enquiry Officer's report was furnished to him on 19th of May, 1997, he was not asked to submit any explanation to the same; therefore, the same amounts to violation of principles of natural justice. Even otherwise, the punishment imposed is disproportionate to that of the misconduct alleged against him. Therefore, the impugned order is

liable to be set aside and he is entitled for being reinstated into service with all consequential benefits.

A detailed counter affidavit has been filed by the respondents, denying the allegations made by the petitioner. It is stated that the petitioner had been irregular to his duties and he had committed similar misconduct on earlier occasions. All the said misconducts for which punishment was imposed, were enumerated in para 3 of the counter affidavit in detail. It is further asserted in the counter that the petitioner did not improve himself in spite of the earlier punishments imposed on him and on various occasions, the efforts made by the Department to contact him when he was on leave, were proved to be futile. Only when he joined duty on 18.02.1997, he was informed through his Section Commander to attend the enquiry. Petitioner attended the Board of Enquiry on 03.03.1997 and on all other consequent days. Thus, the petitioner was given full and fair opportunity to participate in the enquiry. The contention of the petitioner that the respondents have failed to follow the Principles of Natural Justice and he was not asked to submit any explanation, was untenable. The mercy petition/reply to the show cause notice was thoroughly considered by the disciplinary authority and final orders were passed. Thus, the order passed by the disciplinary authority does not suffer from any infirmities, whether factual or legal, and the petitioner does not deserve to be imposed with any lesser punishment than what has been imposed under the impugned proceedings.

I have given anxious consideration to the respective submissions made by both the learned counsel and gone through the counter filed by the respondents and also the other material available on record.

It is an admitted fact that the petitioner has been an habitual absentee from duty and on more than five occasions he was charge sheeted for the very same misconduct of absenteeism and was inflicted with various punishments including censures. Even in the

present case, the petitioner has absented for more than 98 days without any leave or without any prior permission. The only contention of the learned Counsel for the petitioner is that though the Enquiry Officer's report was furnished to him, he was not asked to submit any explanation for the same; therefore, non-asking him for submitting explanation to the Enquiry Officer's report amounts to violation of principles of natural justice. Apart from this, assuming that the misconduct is proved, the punishment imposed on the petitioner is disproportionate to that of the misconduct alleged against him. Insofar as the contention of violation of principles of natural justice is concerned, the learned Counsel for the petitioner relied upon the judgment reported in *Managing Director, E.C.I.L., Hyderabad Vs. B.Karunakar* and submitted that though the Enquiry Officer's report was furnished to the petitioner on 19th of May, 1997, he was not asked to submit any explanation for the same and as such the respondents have violated the Principles of Natural Justice and that has caused prejudice to the petitioner. It is unfortunate that such a proposition is advanced by the learned Counsel for the petitioner. The very furnishing of Enquiry Officer's report is for the purpose of submitting the explanation, if required therefor. The petitioner did not avail the opportunity of submitting the explanation either immediately after furnishing of Enquiry Officer's report or when the show cause notice was issued in this regard. Therefore, the contention that the respondents have violated the principles of natural justice cannot be countenanced.

Insofar as the argument of the learned Counsel for the petitioner that the punishment imposed is disproportionate to that of misconduct is concerned, in the teeth of the detailed counter filed by the respondents enumerating each and every misconduct committed by the petitioner by absenting himself without any leave or prior permission on more than five occasions earlier, which are all similar to that of the present misconduct of absenteeism for which he was given punishments, it cannot be said that the punishment imposed by the respondents in removing the petitioner from services of the

respondent-Organization is either disproportionate or unreasonable.

For all the above reasons, the writ petition is devoid of merits and is liable to be dismissed. Accordingly the writ petition is dismissed. No order as to costs.

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C.V.RAMULU, J

Dt: 07-06-2005.

ajr

..... REGISTRAR

// TRUE COPY //

SECTION OFFICER

To

1 The Air Officer Commanding, Air force Sation, Hakimpet, Secunderabad.
2 The Chief Administrative Officer , Air Force Station, Hakimpet,

Secunderabad.

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